

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ARTHUR DONALD DARBY, JR.,  
Plaintiff,

v.

Civil Action No. 1:14-cv-201

FEDERAL BUREAU OF INVESTIGATION  
Clarksburg, WV,  
Defendant.

FILED  
JAN 06 2015  
U.S. DISTRICT COURT-WVND  
CLARKSBURG, WV 26301

**REPORT AND RECOMMENDATION**

**I. Procedural History**

On November 24, 2014, *pro se* Plaintiff Arthur Donald Darby, Jr. ("Plaintiff") filed a Complaint in this Court against Defendant. (Docket No. 1.) That same day, the Clerk of the Court issued a Notice of Deficient Pleading, instructing Plaintiff to return an application to proceed *in forma pauperis* ("IFP") or the filing fee of \$400.00, a Consent to Collection of Fees from Trust Account, a Prisoner Trust Account Report, ledger sheets, and this Court's approved form complaint. (Docket No. 3.) That Notice advised Plaintiff that failure to return those items within twenty-one (21) days would result in dismissal of his case for failure to prosecute. (*Id.*) On November 25, 2014, the Clerk issued an Amended Notice of Deficient Pleading after determining that Plaintiff was not a prisoner. (Docket No. 4.) That Amended Notice instructed Plaintiff to file an application to proceed IFP or the \$400.00 filing fee and this Court's form complaint within twenty-one (21) days. (*Id.*) Again, the Amended Notice warned Plaintiff that failure to do so would result in dismissal of his case. (*Id.*) Accordingly, Plaintiff had until Tuesday, December 16, 2014, to return the required documents.

On December 18, 2014, the undersigned entered an Order to Show Cause. That Order stated in pertinent part:

The United States Postal Service attempted to deliver both the Notice and Amended Notice on November 29, 2014; however, an authorized recipient was not available at Plaintiff's residence. Notice was left for Plaintiff that he had certified mail. . . . However, a check of the United States Postal Service's website on this date reveals that Plaintiff has made no attempt to collect his certified mail since November 29, 2014.

(Id. at 1-2.) Accordingly, the undersigned ordered Plaintiff to show cause within fourteen (14) days as to why the undersigned should not recommend that his case be dismissed without prejudice "for failure to comply with the Amended Notice of Deficient Pleading." (Id. at 2.) Plaintiff filed what he called a copy of his letter to Defendant on December 22, 2014. (Docket No. 6.) On December 31, 2014, the undersigned's Order to Show Cause was returned as undeliverable. (Docket No. 7.) The notice placed on the envelope stated "Return to Sender--Not Deliverable as Addressed--Unable to Forward." (Id.) This matter was referred to the undersigned by United States District Judge Irene M. Keeley on January 5, 2015. (Docket No. 8.)

A check of the United States Postal Service's website on this date reveals that Plaintiff has still made no attempt to collect either the Notice and Amended Notice. (Attachments 1 and 2.) Furthermore, as noted above, the December 18, 2014 Order to Show Cause was returned to the Court as undeliverable. Given Plaintiff's lack of activity, the undersigned finds that Plaintiff has failed to prosecute his case.

## **II. Recommendation**

For the foregoing reasons, the undersigned **RECOMMENDS** that Plaintiff's Complaint (Docket No. 1) be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the

Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to the *pro se* Plaintiff by certified mail, return receipt requested.

DATED: January 6, 2015

  
JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE